

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMARJIT K. SAHRA and U.S. POSTAL SERVICE,
POST OFFICE, Gaithersburg, Md.

*Docket No. 96-1177; Submitted on the Record;
Issued May 20, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an injury to her right shoulder and right hand in the performance of duty.

On June 5, 1993 appellant, a 34-year-old mail clerk, allegedly sustained an injury to her hands and arms when a shelf she was lifting moved to one side, causing pressure on her hands and arms. On June 7, 1995 appellant filed a Form CA-1 claim based on traumatic injury, contending that the pain she was experiencing in her hands and arms, especially her right arm, was causally related to the June 5, 1995 employment incident.

In a letter dated July 30, 1993, the Office of Workers' Compensation Programs requested that appellant provide a comprehensive medical report, supported by medical reasons, regarding what caused her conditions and whether the doctor believed that factors or incidents in her federal employment contributed to her conditions. The Office informed the employee that she had 30 days to submit the requested information.

In response appellant submitted a June 10, 1993 medical report from Dr. Havinder S. Pabla, a Board-certified orthopedic surgeon, who stated that appellant had experienced pain in her right shoulder and right hand since the work-related injury of June 5, 1993. Dr. Pabla found that appellant had a probable diagnosis of right shoulder impingement syndrome and carpal tunnel syndrome, and concluded that she was unable to return to light duty or her regular job as of that date.¹ Appellant also submitted a report dated July 15, 1993 from Dr. Hajit S. Bajaj, a neurologist, wherein Dr. Bajaj indicated that the results of nerve conduction studies of the right upper extremity, and electromagnetic [EMG] studies were normal, with no signs of carpal tunnel syndrome or cervical radiculopathy on the right side.

¹ Dr. Pabla submitted three additional follow-up notes, dated June 17, June 25, and June 30, 1993, and four follow-up reports dated July 8, July 13, August 31, and September 16, 1993.

In a follow-up report dated August 12, 1993, Dr. Pabla referenced appellant's statement that she was at work on June 5, 1993 when she sustained trauma to her right shoulder and both hands, causing pain when she attempted to use her upper extremity and pain in both hands which interferes with holding, grasping, squeezing, and using and moving the wrists and hands. Dr. Pabla diagnosed shoulder impingement syndrome; post-traumatic, with bilateral carpal tunnel syndrome. He concluded that, with a reasonable degree of medical certainty, most of appellant's symptoms were the result of combined cumulative trauma and the employment-related injury on June 5, 1993, as described in her history.

In a decision dated September 3, 1993, the Office denied appellant's claim, finding that the evidence failed to establish appellant sustained the claimed injury in the performance of duty. In a memorandum to the Director accompanying the decision, the claims examiner stated the conditions diagnosed by Dr. Pabla, *i.e.*, impingement syndrome, right side, and bilateral carpal tunnel syndrome, were typically occupational in nature and usually resulted from prolonged usage of the arms and/or wrists. The claims examiner stated that these conditions were not found to have been caused by a single traumatic event because Dr. Pabla did not rationalize how they were related to the June 5, 1993 employment incident.

In a letter to the Office dated September 23, 1993, appellant requested a hearing. Appellant also submitted two additional medical reports from Dr. Pabla dated September 16 and October 19, 1993.

In a letter dated January 10, 1995, the Office scheduled a hearing for January 30, 1995. Appellant and her representative appeared at the hearing, where she testified regarding the history and aftermath of her June 5, 1993 employment injury, and described the symptoms of her claimed conditions. Appellant and her representative were advised as to the type of evidence required to support the conditions described by Dr. Pabla as a result of the June 5, 1993 employment injury, and appellant's representative requested that the record be held open to afford him the opportunity to submit additional medical evidence. The hearing representative granted his request.

Subsequent to the hearing, appellant's representative submitted a letter dated February 6, 1995 which stated that it had enclosed an updated medical report from Dr. Pabla dated February 8, 1995. In this report, Dr. Pabla stated that while the specific diagnosis caused by the condition is subacromial bursitis and tendinitis, the subacromial bursitis and tendinitis constituted an early stage of shoulder impingement syndrome related to the employment-related history of frequent lifting, pushing, pulling and using the upper extremity. Dr. Pabla concluded, "With a reasonable degree of medical certainty, the injury to the right shoulder and the upper extremity [was] caused by the accident on June 5, 1993. Although the diagnosis of carpal tunnel syndrome and shoulder impingement syndrome is more of an occupational hazard, the early stage of the shoulder impingement syndrome (subacromial bursitis and tendinitis) can be caused by the single trauma as described by [appellant]."

In a decision dated April 11 1995, an Office hearing representative vacated the Office's decision of September 3, 1993. In a memorandum dated April 11, 1995, an Office hearing representative accepted appellant's account of the June 5, 1993 employment incident, noting that the first aid report dated June 7, 1993 stated that appellant sustained a contusion as a result of the

incident, and that subsequent clinical findings indicated bruising and swelling and that she was able to continue work. The hearing representative further stated that appellant had submitted new medical evidence; *i.e.*, the February 8, 1995 report from Dr. Pabla, which indicated a causal relationship between appellant's right shoulder condition and the incident of June 5, 1993. The hearing representative stated that Dr. Pabla's February 8, 1995 report contained deficiencies which prevented appellant from discharging her burden of establishing, by the weight of the evidence, that she sustained a right shoulder injury in the performance of duty on June 5, 1993; however, he stated that the report was sufficient to require further development of the record. The hearing representative noted that the record was devoid of any countervailing medical evidence and now contained an uncontroverted inference of causal relationship as represented by Dr. Pabla, for which the Office is obligated to request further development.

The hearing representative therefore remanded the record to the District Office and ordered the Office to prepare a new statement of facts and request Dr. Pabla to provide a definitive diagnosis and rationalized medical opinion relating her diagnosed condition to the June 5, 1993 employment incident, based on a complete and accurate history of the June 5, 1993 employment incident, objective findings, and diagnostic test results. The hearing representative stated that Dr. Pabla should be specifically requested to explain the causal link between appellant's diagnosed conditions and the employment incident of June 5, 1993 and to state how the incident caused an injury resulting in disability. The hearing representative then instructed the Office to issue a *de novo* decision regarding appellant's entitlement to compensation following such further development as the Office deemed necessary.

By letter dated May 1, 1995, the Office informed appellant that it had enclosed an amended statement of facts for Dr. Pabla to evaluate and render an updated opinion and diagnosis regarding the causal relationship of appellant's claimed conditions or disability to her June 5, 1993 injury. The Office informed appellant that the information should be submitted back to the Office within 30 days so that a prompt final decision could be made regarding appellant's claim. The Office also advised appellant that although a copy of its letter was being sent to Dr. Pabla, it was her responsibility to ensure that the information was received as requested, as failure to do so might result in a decision based on the evidence currently in the file.

Neither Dr. Pabla nor appellant responded to the Office's May 1, 1995 letter within the 30 day period mandated by the Office.

By decision dated June 20, 1995, the Office denied appellant's claim, finding that Dr. Pabla had not submitted a response as requested per the April 11, 1995 remand order. In a memorandum to the Director, the claims examiner stated that as appellant had not borne her burden by submitting from Dr. Pabla the necessary medical evidence supporting her claim for employment-related arm and hand injuries sustained on June 5, 1993, as requested, the Office could not accept her claim.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

In the present case, it is uncontested the appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,⁸ and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on June 5, 1993 caused a personal injury and resultant disability.

The hearing representative in his April 11, 1995 decision found that Dr. Pabla's February 8, 1995 report was sufficient to require further development of the record because it established an uncontroverted inference of causal relationship, which required the Office to further develop the medical evidence. However, the hearing representative further stated that Dr. Pabla was required to provide a definitive diagnosis and rationalized medical opinion

² 5 U.S.C. § 8101 *et seq.*

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

⁸ See *John J. Carlone*, 41 ECAB 353 (1989).

relating appellant's diagnosed shoulder and hand conditions to the June 5, 1993 employment incident. Appellant, however, failed to submit this evidence within 30 days. Therefore, on the basis of the medical evidence before him, the claims examiner concluded in the Office's June 20, 1995 decision that appellant had failed to establish a causal relationship between her claimed conditions and the employment incident of June 5, 1993.⁹

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury to her right shoulder and right hand in the performance of duty.

The only evidence pertaining to the issue of whether appellant's shoulder and arm conditions were causally related to the June 5, 1993 employment incident was the February 8, 1995 report submitted by Dr. Pabla. In this report, Dr. Pabla diagnosed subacromial bursitis and tendinitis, an early stage of shoulder impingement syndrome related to the employment-related history of frequent lifting, pushing, pulling and using the upper extremity, and concluded with a reasonable degree of medical certainty that the injury to the right shoulder and the upper extremity was caused by the accident on June 5, 1993. Dr. Pabla indicated that while carpal tunnel syndrome and shoulder impingement syndrome were considered to be more of an occupational hazard than the result of a traumatic episode, the early stage of shoulder impingement syndrome *could be* caused by the single trauma appellant described. [Emphasis added].

The Board finds that the hearing representative properly found that Dr. Pabla's February 8, 1995 report, while raising an inference of a causal relationship between appellant's shoulder and hand conditions, contained deficiencies which prevented appellant from discharging her burden of establishing, by the weight of the evidence, that she sustained right shoulder and right hand injuries in the performance of duty on June 5, 1993. The Board specifically finds that Dr. Pabla's opinion was speculative and equivocal with regard to the issue of causal relationship between the claimed conditions and the June 5, 1993 employment incident. As these deficiencies were not remedied by the subsequent report requested by the hearing representative in his April 11, 1995 decision, which appellant failed to submit, the Board finds, on the basis of the medical evidence contained in the record, that appellant failed to submit probative and rationalized medical evidence sufficient to establish that she sustained shoulder and hand injuries in the performance of duty on June 5, 1993.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation in its April 11 and June 20, 1995 decisions.

⁹ Subsequent to the Office's June 20, 1995 decision, appellant submitted to the Office a letter dated September 21, 1995, in addition to a September 10, 1995 medical report from Dr. Pabla which accompanied the letter. The Board is unable to review these documents, however, as they were not contained in the evidence of record before the Office prior to its June 20, 1995 decision; *see* 20 C.F.R. § 501.2(c). Appellant, however, may submit these documents to the Office if she chooses to file reconsideration of the instant decision.

The decisions of the Office of Workers' Compensation Programs dated April 11 and June 20, 1995 are hereby affirmed.

Dated, Washington, D.C.
May 20, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member